

AMENDED IN ASSEMBLY APRIL 28, 2003

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 840

Introduced by Assembly Member Calderon

February 20, 2003

An act to add Section 1769 to *amend Section 1756 of, and to the* Public Utilities Code, relating to, public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 840, as amended, Calderon. Public Utilities Commission: evidence: orders or decisions: review.

Under existing law, the Public Utilities Commission is not required to apply the technical rules of evidence to hearings, investigations, and proceedings, which are governed by certain existing law and by rules of practice and procedure adopted by the commission.

Existing law provides for judicial review of an order or decision of the Public Utilities Commission in the courts of appeal or Supreme Court, and ~~requires the writ of mandamus to lie from the Supreme Court and from the court of appeal to the commission in all proper cases as prescribed in a specified section of the Code of Civil Procedure~~ *authorizes an aggrieved party to petition for a writ of review.*

This bill would require all evidence in any adjudication to be taken in accordance with certain existing law governing evidence in administrative proceedings. ~~The bill would require judicial review of a decision of the commission upon the verified petition of the party beneficially interested, that there is no other plain, speedy, and adequate~~

remedy. The bill would also require judicial review upon the verified petition of the party beneficially interested, that the decision relies on reasoning that misconstrues, misinterprets, or misapplies a relevant statutory provision or that it relies on unconstitutional or unenforceable statutory provisions. The bill would require the commission to amend its rules of practice and procedure in accordance with the requirements of this bill.

The bill would require a writ of review to issue if either a petition for a writ of review challenges a decision of the commission on the grounds that the decision relies on reasoning that misconstrues, misinterprets, or misapplies a statute, the petition challenges the decision on the grounds that the decision relies on an unconstitutional or prohibited federal law or regulation that the commission may not declare unenforceable, or whenever the court deems appropriate for purposes of inquiring into and determining the lawfulness of the decision.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. *Section 1756 of the Public Utilities Code is*
- 2 *amended to read:*
- 3 1756. (a) Within 30 days after the commission issues its
- 4 decision denying the application for a rehearing, or, if the
- 5 application was granted, then within 30 days after the commission
- 6 issues its decision on rehearing, or at least 120 days after the
- 7 application is granted if no decision on rehearing has been issued,
- 8 any aggrieved party may petition for a writ of review in the court
- 9 of appeal or the Supreme Court for the purpose of having the
- 10 lawfulness of the original order or decision or of the order or
- 11 decision on rehearing inquired into and determined. If the writ
- 12 issues, it shall be made returnable at a time and place specified by
- 13 court order and shall direct the commission to certify its record in
- 14 the case to the court within the time specified.
- 15 (b) *A writ of review shall issue in any one of the following*
- 16 *circumstances:*
- 17 (1) *The petition, in whole or in part, challenges the decision on*
- 18 *the ground that the decision relies on reasoning that misconstrues,*
- 19 *misinterprets, or misapplies a relevant statutory provision.*



1 (2) *The petition, in whole or in part, challenges the decision on*
2 *the grounds that the decision relies on a statutory provision that is*
3 *unconstitutional or prohibited by federal law or regulations, and*
4 *the commission has no authority to declare the statute*
5 *unenforceable under Section 3.5 of Article III of the California*
6 *Constitution.*

7 (3) *Whenever the court deems appropriate for purposes of*
8 *inquiring into and determining the lawfulness of the decision.*

9 (c) The petition for review shall be served upon the executive
10 director of the commission either personally or by service at the
11 office of the commission.

12 ~~(e)~~

13 (d) For purposes of this section, the issuance of a decision or the
14 granting of an application shall be construed to have occurred on
15 the date when the commission mails the decision or grant to the
16 parties to the action or proceeding.

17 ~~(d)~~

18 (e) The venue of a petition filed in the court of appeal pursuant
19 to this section shall be in the judicial district in which the petitioner
20 resides. If the petitioner is a business, venue shall be in the judicial
21 district in which the petitioner has its principal place of business
22 in California.

23 ~~(e)~~

24 (f) Any party may seek from the Supreme Court, pursuant to
25 California Rules of Court, an order transferring related actions to
26 a single appellate district.

27 ~~(f)~~

28 (g) For purposes of this section, review of decisions pertaining
29 solely to water corporations shall only be by petition for writ of
30 review in the Supreme Court, except that review of complaint or
31 enforcement proceedings may be in the court of appeal or the
32 Supreme Court.

33 ~~(g)~~

34 (h) No order or decision arising out of a commission
35 proceeding under Section 854 shall be reviewable in the court of
36 appeal pursuant to subdivision (a) if the application for
37 commission authority to complete the merger or acquisition was
38 filed on or before December 31, 1998, by two
39 telecommunications-related corporations including at least one
40 which provides local telecommunications service to over one

1 million California customers. These orders or decisions shall be
2 reviewed pursuant to the Public Utilities Code in existence on
3 December 31, 1998.

4 *SEC. 2.* Section 1769 is added to the Public Utilities Code, to
5 read:

6 1769. (a) Notwithstanding Section 1701, all evidence in any
7 adjudication shall be taken in accordance with Section 11513 of
8 the Government Code.

9 ~~(b) Notwithstanding any other provision of this article, judicial~~
10 ~~review of a decision of the commission shall be had upon the~~
11 ~~verified petition of the party beneficially interested, under either~~
12 ~~of the following circumstances:~~

13 ~~(1) Petitioner has no plain, speedy, or adequate remedy in the~~
14 ~~ordinary course of law.~~

15 ~~(2) The petition challenges the decision on either of the~~
16 ~~following grounds:~~

17 ~~(A) The decision relies on reasoning that misconstrues,~~
18 ~~misinterprets, or misapplies a relevant statutory provision.~~

19 ~~(B) The decision relies on a statutory provision that is~~
20 ~~unconstitutional, or unenforceable on the basis that federal law or~~
21 ~~federal regulation prohibits its enforcement.~~

22 ~~(c)~~

23 (b) The commission shall amend its rules of practice and
24 procedure in accordance with this section.

